

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STEVE STROMAN,

Petitioner,

-v.-

9:03-CV-0068
(TJM)(DRH)

JOE T. SMITH,

Respondent.

APPEARANCES:

OF COUNSEL:

STEVE STROMAN
Petitioner, *pro se*
98-B-1590

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DAVID R. HOMER, U.S. MAGISTRATE JUDGE

ORDER

Presently before this Court is a Motion from Petitioner Steve Stroman ("Petitioner" or "Stroman"), seeking to stay this habeas proceeding. See Dkt. No. 36. Respondent has opposed this Motion. Dkt. No. 40.

By way of background, this action was filed on January 15, 2003. Respondent filed a Response to the Petition on September 8, 2003. On October 6, 2003 this Court stayed this action so that Petitioner could pursue a Motion pursuant to CPL §440. Dkt. No. 14. Thereafter, in response to an Order from Judge McAvoy directing Petitioner to show cause why the Petition should not be dismissed for failure to prosecute (Dkt. No. 23), Attorney Morabito filed a letter requesting additional time for him to review

Petitioner's state court proceedings and advise Petitioner on a proper course of action.¹ Dkt. No. 24. Counsel was granted additional time to review Petitioner's case on October 18, 2005. Dkt. No. 26. On November 18, 2005 Attorney Morabito filed a letter requesting that the pending Petition be decided by this Court on its merits. Dkt. No. 27. This Court lifted the stay on January 12, 2006. Dkt. No. 28.

On February 9, 2006 Petitioner filed a Letter Request stating that he did not authorize the actions of Attorney Morabito, and requested that the stay not be lifted in this proceeding. Dkt. No. 29. The Clerk docketed the Letter Request as a Motion for a Stay. By Order dated June 22, 2006 this Court noted that:

Upon reviewing the Letter Request, Petitioner has not specified what, if any, state court challenges he intends to pursue or the grounds he intends to raise in each. Given the passage of time since this February 2006 Letter Request was filed, it would be reasonable to expect that Petitioner has taken advantage of this time and has initiated these state court proceedings. Accordingly, Petitioner will be permitted to file a proper Motion to Stay this action. Any such Motion must set forth the state court proceedings Petitioner has initiated since the February 2006 filing of his request for a stay, or those which he had pending prior to that date. ***If there are proceedings that Petitioner intends to initiate, but has not done so, he should initiate those actions. Thereafter, he may file a Motion to Stay with proof of such new filings as support for the Motion to Stay.*** (emphasis supplied). *Id.*

In the present Motion, Petitioner states that he is preparing his §440 Motion, and has filed a Motion to Disqualify the County Court Judge. However, since June 22, 2006, Petitioner has not filed his §440 Motion, or at least has not submitted proof of such filing to this Court. Thus, this Court is unable to ascertain whether Petitioner has any meritorious claims to raise, or is merely engaging in dilatory litigation tactics.

¹Attorney Morabito never entered a formal appearance on behalf of Petitioner and, in fact, was not admitted before this Court. *See* Docket entries of October 19, 2005 and October 21, 2005.

Accordingly, Petitioner's Motion to Stay will be denied without prejudice.


WHEREFORE, it is hereby

ORDERED, that Petitioner's Motion to Stay (Dkt. No. 36) seeking a further stay this action is **DENIED without prejudice**. Petitioner may file a proper Motion to Stay this action ***with the proper support***, as discussed above, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 8, 2006



United States Magistrate Judge